

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO.: 7:07-CV-166-H

JANICE HOSLER on behalf of
herself and all other similarly
situated individuals,

Plaintiffs,

v.

SMITHFIELD PACKING COMPANY, INC.,

Defendant.

ORDER

This matter is before the court on plaintiffs' motion to exclude the expert opinions of Jeffrey Fernandez ("Fernandez"), who conducted a time and motion study for defendant, Smithfield Packing Company, Inc. [DE #352]. United States Magistrate Judge James E. Gates filed a Memorandum and Recommendation ("M&R") on August 20, 2010, recommending that plaintiffs' motion be denied. (Mem. & Recommendation [DE #417].) No objections to the M&R have been filed, and the time for doing so has expired. This matter is ripe for adjudication.

Under Rule 72(b) of the Federal Rules of Civil Procedure, a District Judge shall make a de novo determination of any portion of an M&R to which specific written objection has been made.


Fed. R. Civ. P. 72(b); see also Local Civil Rule 72.4(b)(1), EDNC. Having failed to file any written objection to the M&R, the parties have waived their right to de novo review of any issue covered in the M&R.

Nevertheless, this court has conducted a full and careful review of the M&R and other documents of record and determines that the recommendation of the magistrate judge is, in all respects, in accordance with the law and should be approved. Fernandez appears more than qualified to provide expert testimony in this case. His opinions concern an issue central to plaintiffs' Fair Labor Standards Act claims - what amount of time, if any, did defendant fail to compensate employees at its Tar Heel facility for donning and doffing protective gear, walking to their work stations and cleaning equipment? Using the elemental analysis methodology, Fernandez conducted a time and motion study to estimate the amount of time required to perform these functions. His opinions are both relevant to the proceeding and would be helpful to the jury. The elemental analysis methodology upon which Fernandez' opinions are based is also a reliable scientific methodology that is generally accepted within the industrial engineering community.

The court concludes that Mr. Fernandez' opinions are relevant and sufficiently reliable to satisfy the standards of Rule 702 of the Federal Rules of Civil Procedure. Accordingly,

the court ADOPTS the recommendation of the magistrate judge as its own. Plaintiffs' motion to exclude Fernandez' opinions [DE #352] is DENIED.

This 24TH day of September 2010.


MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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